IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O. O. C. J.

NOTICE OF MOTION NO.117 OF 2007
IN
WRIT PETITION NO.1668 OF 2005

Nargis Abdul Rehman Antulay & anr. Petitioners
vs.
Municipal Corporation of Gr. Mumbai
& ors. Respondents

None present for the petitioner.

Mr.K.K.Singhvi, Sr. Counsel with Ms.Trupti Puranik for the respondent.

CORAM : ANOOP V. MOHTA,J.

DATED : 17th July, 2007

P.C.

The notice of motion is taken out by the respondent-Municipal Corporation of Gr. Mumbai (The Municipal Corporation). Affidavit of service dated 4th March, 2007 is filed on record.

2. The order dated 4.4.2007 in Notice of Motion no.88/2007 in Writ Petition No.236/2005 passed in similarly placed cases by modifying the basic order against the Municipal Corporation, reads thus:

. "1. This notice of motion is taken out by the Municipal Corporation for vacating the interim relief which has been granted by this Court by order dated 2nd February, 2005. This notice of motion is taken out in

view of the Division Bench judgement of this Court dated 27th March, 2006 in Municipal Corporation of Greater Mumbai v. Dalamal Tower Premises Co-operative Society Limited reported in 2006(3) Bom.C.R. 557 in which similar issue came to be decided in favour of the Municipal Corporation and the revised assessment was upheld.

2. Against the said judgement and order, Special Leave Petition was filed before the Supreme Court and leave to appeal was granted and the following interim directions were issued:-

. "The recovery on the basis of revised enhanced assessment from the appellants is stayed subject to the condition that besides the undisputed amount, the appellants also deposit with the respondent-Corporation fifty per cent of the difference between the assessment and the revised enhanced assessment within a period of six weeks and also give an undertaking that in case the appeal is dismissed and revised assessment is upheld, the balance amount would be paid with interest at the rate of 6-1/4%. Likewise, the Principal Assessor and Collector, on behalf of the Commissioner and the Corporation, will file an undertaking that in case the appeals are allowed and revised assessment is set aside, fifty per cent of the payment made on the basis of the

revised assessment would be refunded to the appellants within the same rate of interest i.e. 6-1/4%."

3. In view of the order that has been passed by the Supreme Court on 11th September, 2006 in the aforesaid case, appropriate orders will have to be passed in this case modifying the interim order dated 2nd February, 2005.

4. Under the circumstances, the said order dated 2nd February, 2005 is modified and it is directed that petitioners to deposit with the respondent-Corporation 50% of the difference between the assessment and the revised enhanced assessment within a period of six weeks and petitioners also to give an undertaking that in case the appeal is dismissed and the revised assessment is upheld, the balance amount would be paid with interest @ 6-1/4% per annum. Similarly, the Principal Assessor and Collector on behalf of the Commissioner & Corporation will file an undertaking that in case the appeals are allowed and revised assessment is set aside 50% of the payment made on the basis of revised assessment will be refunded to the petitioners with the same rate of interest i.e. 6-14% per annum.

5. The notice of motion is accordingly disposed of."

3. This matter is therefore also disposed of in terms as referred in para 4 above as in all such similar matters this Court has been passing the above recorded modified order instead of vacating the stay already granted. The just and fair contention that same order be passed in this matter cannot be denied. Therefore, the following order:

> "Under the circumstances, the said order dated 17th August, 2005 is modified and it is directed that petitioners to deposit with the respondent-Corporation 50% of the difference between the assessment and the revised enhanced assessment within a period of six weeks and petitioners also to give an undertaking that in case the appeal is dismissed and the revised assessment is upheld, the balance amount would be paid with interest @ 6-1/4% per annum. Similarly, the Principal Assessor and Collector on behalf of the Commissioner & Corporation will file an undertaking that in case the appeals are allowed and revised assessment is set aside 50% of the payment made on the basis of revised assessment will be refunded to the petitioners with the same rate of interest i.e. 6-14% per annum."

4. Notice of motion is accordingly disposed of.

[ANOOP V. MOHTA,J.]